

Appendix B

Model Material Transfer Agreement (MTA)

NOTE TO REVIEWERS

Text that appears in bold italics and between double lines is provided as clarification to the reader. These explanatory text sections will be included in the public review version of the Draft Environmental Impact Statement, but they will not be included in any final (signed) MTA.

The MTA begins by providing the substantive definitions that are used in the MTA. The definitions that appear in the MTA are consistent with the definitions used in the CRADA that appears in Appendix A of this EIS, which also reflect the definitional approach contained in the Uniform Biological Material Transfer Agreement developed and published by the National Institutes of Health/Public Health Service in March 1995 (see 60 Fed. Reg. 12771 (March 8, 1995)). Additional explanations concerning the meaning of certain definitions appear with the definitions used in the CRADA that appears in Appendix A of this DEIS.

Defined terms appear in bold-faced print throughout the MTA.

B.1 Definitions

1.1 Provider

The term “**Provider**” means the person(s) providing the **Material**. The name and address of Provider is:

(Name)

(Address)

2.2 Recipient

The term “**Recipient**” means the person(s) receiving the **Material**. The name and address of Recipient is:

(Name)

(Address)

2.3 Transferred Material

The term “**Transferred Material**” means the **Material** being transferred from **Provider** to **Recipient** that is described as follows: _____

1.4 Material

The term “**Material**” means **Research Specimens, Progeny, and Unmodified Derivatives**. The **Material** shall not include: (a) **Modifications** or (b) other substances created by **Provider** through use of the **Material** that are not **Modifications, Progeny, or Unmodified Derivatives**.

1.5 Research Specimens

The term “**Research Specimens**” means material in **Provider’s** possession that **Provider** has or had authority to collect under the collection permit or permits issued by [*name of authorizing unit of the National Park System*] to **Provider** (copy of permit(s) attached hereto), or that was otherwise originally and lawfully collected from [*name of authorizing unit of the National Park System*] and is now in **Provider’s** possession.

1.6 Progeny

The term “**Progeny**” means any unmodified descendant from **Material**, such as virus from virus, cell from cell, or organism from organism.

1.7 Unmodified Derivatives

The term “**Unmodified Derivatives**” means substances created by **Recipient** that constitute an unmodified functional subunit or product expressed by **Material**. Some examples include: subclones of unmodified cell lines, purified or fractionated subsets of **Material**, proteins expressed by DNA/RNA obtained from **Material**, or monoclonal antibodies secreted by a hybridoma cell line.

1.8 Modifications

The term “**Modifications**” means substances created by **Recipient** that contain/incorporate/are derived from **Research Specimens, Progeny, or Unmodified Derivatives**.

1.9 Invention

The term “**Invention**” means any invention or discovery that is or may be patentable or otherwise protected under Title 35 of the United States Code, or any novel variety of plant that is or may be protectable under the Plant Variety Protection Act (7 USC § 2321 *et seq.*).

1.10 Product

The term “**Product**” means any **Modifications, Inventions**, or any other commercially valuable or otherwise useful or potentially useful material, compound, or useful or potentially useful combination of compound, protein, or metabolite recovered, obtained, derived, resulting, or otherwise isolated by scientific research conducted on **Progeny, Unmodified Derivatives**, or a **Research Specimen** originally acquired from [*name of authorizing unit of the National Park System*], or any derivative or analog of such material, compound, protein, metabolite or other isolate, or any discovery that is or may be patentable or otherwise

protected under Title 35 of the United States Code, or any novel variety of plant that is or may be protectable under the Plant Variety Protection Act (7 USC § 2321 *et seq.*) and developed from **Progeny, Unmodified Derivatives, or Research Specimens** originally acquired from [name of authorizing unit of the National Park System].

1.11 Commercial Purpose

The term “**Commercial Purpose**” means the sale, lease, license, or other transfer of any **Progeny, Unmodified Derivatives, Modifications, Invention, or Product** for value received, including but not limited to scientific research uses of any **Progeny, Unmodified Derivatives, Modifications, Invention, or Product** by any person (including but not limited to **Provider and Recipient**) in the performance of any contract research, screening compound libraries, or the conduct of research activities that result in any sale, lease, license, or other transfer of any **Progeny, Unmodified Derivatives, Modifications, Invention, or Product**.

The “Terms and Conditions” of the MTA are intended to document the Provider’s and Recipient’s understanding and compliance with the obligations of the parties pursuant to the National Park Service (NPS)’s research permit requirements, as re-stated in the MTA. The Provider is authorized to transfer Material to Recipient only upon approval of the MTA by the NPS. By executing the MTA, Recipient also specifically acknowledges and agrees to the same terms and conditions relating to use of Research Specimens that apply to all permitted researchers who collect research specimens directly from units of the National Park System. In this way, the NPS intends to promote equity among researchers who collect directly from national parks pursuant to a permit as well as researchers who obtain specimens indirectly from other authorized third-party Providers.

B.2 Terms and Conditions of this Agreement and Authorization

2.1 **Provider and Recipient** hereby acknowledge that the NPS retains ownership of the **Research Specimens**. **Provider** is authorized to transfer to **Recipient** the specific **Transferred Material** described above in Section 1.3 upon execution of this Material Transfer Agreement (MTA) by **Provider, Recipient**, and [name of authorizing unit of the National Park System].

2. **Recipient** agrees that the **Transferred Material**:

(a) will be used in compliance with all applicable federal and state laws, governmental regulations, and guidelines (including but not limited to all applicable terms and conditions of the NPS’s standardized Scientific Research and Collecting Permit that governs collection, distribution, and use of **Research Specimens** collected from U.S. national parks; reference copy of Scientific Research and Collecting Permit General Conditions is attached);

(b) may be used for scientific or educational purposes only, and may not be used for any **Commercial Purpose** without the prior written authorization of the NPS; and

(c) may not be sold or otherwise transferred to any other person without the prior written authorization of the NPS.

2. **Recipient** understands and agrees that the NPS may seek damages to which the NPS may be entitled, including but not limited to injunctive relief for any unauthorized sale, transfer, or other use of **Transferred Material**.

3. **Recipient** agrees to provide to *[name of authorizing unit of the National Park System]* a copy of any interim reports, final reports, publications, and other materials resulting from use of **Transferred Material**. **Recipient** also agrees to identify in each such written report or other material the project study number (if any) of the NPS-permitted project that collected the original **Research Specimen** from which the **Transferred Material** is derived. In addition, **Recipient** agrees to provide notice in writing to *[name of authorizing unit of the National Park System]* not less than sixty (60) days before **Recipient** files an application for a patent or other intellectual property claim resulting from use of **Transferred Material**.

4. **RECIPIENT AGREES THAT THE TRANSFERRED MATERIAL IS EXPERIMENTAL IN NATURE AND IS BEING PROVIDED WITHOUT WARRANTY, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR FREEDOM FROM INFRINGEMENT OF ANY PATENT OR OTHER PROPRIETARY RIGHT OF A THIRD PARTY.**

5. **RECIPIENT AGREES TO HOLD HARMLESS AND INDEMNIFY THE U.S. DEPARTMENT OF THE INTERIOR, NATIONAL PARK SERVICE, AND ANY UNIT THEREOF, THE U.S. GOVERNMENT, AND PERSONS ACTING ON THEIR BEHALF, FOR ANY CLAIM ASSERTED BY A THIRD PARTY RELATED TO RECIPIENT'S POSSESSION, USE, STORAGE, OR DISPOSAL OF TRANSFERRED MATERIAL.**

B.3 Administration

Any correspondence or other notice concerning this agreement should be addressed to: *[insert name and address of authorizing official and unit of the National Park System]*.

SIGNATURES BEGIN ON NEXT PAGE

Signature Page

SIGNATURES

In Witness Whereof, the parties have executed this MATERIAL TRANSFER AGREEMENT (MTA) on the dates set forth below. This MTA may be signed in counterparts, each of which will be deemed to be an original. All such counterparts shall together constitute a single, executed instrument when all parties have so signed. Any communication or notice to be given shall be forwarded to the respective addresses listed below.

FOR NPS:

[Name] Date
Superintendent
[Name of authorizing unit of the National Park System]

Mailing address for notices: Office of the Superintendent
[name and address]

FOR PROVIDER:

[Signatory's name] Date
[Title]
[Name of Provider (if different from signatory)]

Mailing address for notices: [name and address]

FOR RECIPIENT:

[Signatory's name] Date
[Title]
[Name of Recipient (if different from signatory)]

Mailing address for notices: [name and address]

*NOTE: Both **Provider** and **Recipient** should sign this MTA, and then forward it to [name of authorizing unit of the National Park System] for approval. A fully executed copy of the completed MTA will be sent to **Provider** and **Recipient** upon approval. This agreement does not enter into force until signed by the NPS.*



GENERAL CONDITIONS

For

SCIENTIFIC RESEARCH AND COLLECTING PERMIT

United States Department of the Interior
National Park Service

1. **Authority** - The permittee is granted privileges covered under this permit subject to the supervision of the superintendent or a designee, and shall comply with all applicable laws and regulations of the National Park System area and other federal and state laws. A National Park Service (NPS) representative may accompany the permittee in the field to ensure compliance with regulations.
2. **Responsibility** - The permittee is responsible for ensuring that all persons working on the project adhere to permit conditions and applicable NPS regulations.
3. **False information** - The permittee is prohibited from giving false information that is used to issue this permit. To do so will be considered a breach of conditions and be grounds for revocation of this permit and other applicable penalties.
4. **Assignment** - This permit may not be transferred or assigned. Additional investigators and field assistants are to be coordinated by the person(s) named in the permit and should carry a copy of the permit while they are working in the park. The principal investigator shall notify the park's Research and Collecting Permit Office when there are desired changes in the approved study protocols or methods, changes in the affiliation or status of the principal investigator, or modification of the name of any project member.
5. **Revocation** - This permit may be terminated for breach of any condition. The permittee may consult with the appropriate NPS Regional Science Advisor to clarify issues resulting in a revoked permit and the potential for reinstatement by the park superintendent or a designee.
6. **Collection of specimens (including materials)** - No specimens (including materials) may be collected unless authorized on the Scientific Research and Collecting permit.

The general conditions for specimen collections are:

- Collection of archeological materials without a valid Federal Archeology Permit is prohibited.
- Collection of federally listed threatened or endangered species without a valid U.S. Fish and Wildlife Service endangered species permit is prohibited.
- Collection methods shall not attract undue attention or cause unapproved damage, depletion, or disturbance to the environment and other park resources, such as historic sites.
- New specimens must be reported to the NPS annually or more frequently if required by the park issuing the permit. Minimum information for annual reporting includes specimen classification, number of specimens collected, location collected, specimen status (e.g., herbarium sheet, preserved in alcohol/formalin, tanned and mounted, dried and boxed, etc.), and current location.
- Collected specimens that are not consumed in analysis or discarded after scientific analysis remain federal property. The NPS reserves the right to designate the repositories of all specimens removed from

the park and to approve or restrict reassignment of specimens from one repository to another. Because specimens are Federal property, they shall not be destroyed or discarded without prior NPS authorization.

- Each specimen (or groups of specimens labeled as a group) that is retained permanently must bear NPS labels and must be accessioned and cataloged in the NPS National Catalog. Unless exempted by additional park-specific stipulations, the permittee will complete the labels and catalog records and will provide accession information. It is the permittee's responsibility to contact the park for cataloging instructions and specimen labels as well as instructions on repository designation for the specimens.
- Collected specimens may be used for scientific or educational purposes only, and shall be dedicated to public benefit and be accessible to the public in accordance with NPS policies and procedures.
- Any specimens collected under this permit, any components of any specimens (including but not limited to natural organisms, enzymes or other bioactive molecules, genetic materials, or seeds), and research results derived from collected specimens are to be used for scientific or educational purposes only, and may not be used for commercial or other revenue-generating purposes unless the permittee has entered into a Cooperative Research And Development Agreement (CRADA) or other approved benefit-sharing agreement with the NPS. The sale of collected research specimens or other unauthorized transfers to third parties is prohibited. Furthermore, if the permittee sells or otherwise transfers collected specimens, any components thereof, or any products or research results developed from such specimens or their components without a CRADA or other approved benefit-sharing agreement with NPS, permittee will pay the NPS a royalty rate of twenty percent (20%) of gross revenue from such sales or other revenues. In addition to such royalty, the NPS may seek other damages to which the NPS may be entitled including but not limited to injunctive relief against the permittee.

7. **Reports** - The permittee is required to submit an Investigator's Annual Report and copies of final reports, publications, and other materials resulting from the study. Instructions for how and when to submit an annual report will be provided by NPS staff. Park research coordinators will analyze study proposals to determine whether copies of field notes, databases, maps, photos, and/or other materials may also be requested. The permittee is responsible for the content of reports and data provided to the National Park Service.

8. **Confidentiality** - The permittee agrees to keep the specific location of sensitive park resources confidential. Sensitive resources include threatened species, endangered species, and rare species, archeological sites, caves, fossil sites, minerals, commercially valuable resources, and sacred ceremonial sites.

9. **Methods of travel** - Travel within the park is restricted to only those methods that are available to the general public unless otherwise specified in additional stipulations associated with this permit.

10. **Other permits** - The permittee must obtain all other required permit(s) to conduct the specified project.

11. **Insurance** - If liability insurance is required by the NPS for this project, then documentation must be provided that it has been obtained and is current in all respects before this permit is considered valid.

12. **Mechanized equipment** - No use of mechanized equipment in designated, proposed, or potential wilderness areas is allowed unless authorized by the superintendent or a designee in additional specific conditions associated with this permit.

13. **NPS participation** - The permittee should not anticipate assistance from the NPS unless specific arrangements are made and documented in either an additional stipulation attached to this permit or in other separate written agreements.

14. **Permanent markers and field equipment** - The permittee is required to remove all markers or equipment from the field after the completion of the study or prior to the expiration date of this permit. The superintendent or a designee may modify this requirement through additional park specific conditions that may be attached to this permit. Additional conditions regarding the positioning and identification of markers and field equipment may be issued by staff at individual parks.

15. **Access to park and restricted areas** - Approval for any activity is contingent on the park being open and staffed for required operations. No entry into restricted areas is allowed unless authorized in additional park specific stipulations attached to this permit.

16. **Notification** - The permittee is required to contact the park's Research and Collecting Permit Office (or other offices if indicated in the stipulations associated with this permit) prior to initiating any fieldwork authorized by this permit. Ideally this contact should occur at least one week prior to the initial visit to the park.

17. **Expiration date** - Permits expire on the date listed. Nothing in this permit shall be construed as granting any exclusive research privileges or automatic right to continue, extend, or renew this or any other line of research under new permit(s).

18. **Other stipulations** - This permit includes by reference all stipulations listed in the application materials or in additional attachments to this permit provided by the superintendent or a designee. Breach of any of the terms of this permit will be grounds for revocation of this permit and denial of future permits.